

AGENDA ITEM

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DATE: October 13, 2013

TO: Members, Board of Trustees

FROM: Joseph Dunn, CEO

SUBJECT: Implementation of AB 888– Authorize Creation of Oversight Committee

EXECUTIVE SUMMARY

AB 888, which was enacted by the Legislature as an urgency measure, expands the State Bar's ability to enforce the provisions of the Business and Professions Code prohibiting the unauthorized practice of law (UPL). AB 888 allows the courts, in a civil enforcement action brought by the State Bar, to impose remedies now available in civil enforcement actions by the Attorney General, district attorneys and local prosecutors brought under Business and Professions Code sections 6126.5 or 17200, including civil penalties, attorney's fees and costs. This item seeks the establishment by the Board of Trustees of a Board committee to provide oversight of the work of the State Bar in implementing the statute.

BACKGROUND

AB 888 expands the State Bar's ability to enforce UPL by expanding the relief that a court may order in a civil action brought by the State Bar. Under existing law, persons who engage in the unauthorized practice of law (UPL) are subject to both criminal and civil prosecutions that can be brought by the State Attorney General or local prosecutors. As a licensing agency, the State Bar receives and investigates complaints of UPL. Prior to the passage of AB 888, the State Bar's enforcement authority was limited to seeking an injunction in superior court.

Under AB 888, many of the civil remedies available to law enforcement against UPL will now be available in a civil action by the State Bar. (See *and* compare, Business & Professions Code, §§ 6126.5, 17200.) The bill allows the superior court to impose a civil penalty not to exceed \$2,500 for each violation, to be paid to the State Bar. The bill also provides for a civil penalty not to exceed \$6,000 for the intentional violation of any injunction prohibiting the unlawful practice of law. If the conduct is intentional and of a continuing

nature, each day of that conduct shall be deemed a separate and distinct violation.¹ The bill further provides for the award of attorney's fees and costs to the State Bar.

DISCUSSION

To implement AB 888, the Bar will rely on a small stand-alone UPL unit, which will investigate and work up cases for filing. Actual litigation of these actions could be provided by outside law firms willing to provide pro bono assistance, under the supervision of appropriate State Bar staff.

Oversight of UPL enforcement activities authorized under the new law should be provided by the Board of Trustees. To facilitate this oversight, staff recommends that the Board authorize the creation of a Board committee whose charge will be to develop policy for implementation of the Bar's UPL enforcement activities and to review the performance of the UPL unit.

FISCAL / PERSONNEL IMPACT:

At the direction of the Board, the oversight committee would be staffed from the Executive Offices. Staff time and meeting costs will result in some fiscal impact, the amount of which is unknown at this time.

BOARD BOOK IMPACT:

Tab 9, Article 1.

RECOMMENDATION

It is recommended that the Board of Trustees approve the creation of a Board committee to provide oversight of UPL enforcement by the State Bar.

It is further recommended that President Rodriguez present proposed committee appointments to the Board of Trustees at their November 15, 2013 board meeting.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the above recommendation, the following resolutions would be in order:

RESOLVED, that the Board hereby approves the creation of a Board committee to provide oversight of UPL enforcement by the State Bar; and it is

¹ The penalties collected by the State Bar will be used to provide relief to clients harmed by persons engaged in UPL or to support the provision of free civil legal services for low-income Californians through the State Bar's Justice-Gap fund under Business and Professions Code section 6033.

FURTHER RESOLVED, that President Rodriguez present proposed committee appointments for the new committee to the Board of Trustees at their November 15, 2013 board meeting.